

Hot Issue

FBI Agents Rap Policy Of Burning Files, Link It to Public-Access Acts

Law Enforcement Impeded, They Say, and Congress May Consider the Problem

What Hath RICO Wrought?

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The extortion letter looked familiar to Detroit FBI agents when it was brought to their office earlier this year by a frightened citizen. As an agent relates the incident, the style of the letter was that of a man who had been investigated because of a similar threat three years ago.

Until recently, agents could have pulled the suspect's file, done a quick check and perhaps protected the frightened citizen. This year, however, they couldn't. The file, like hundreds of thousands of other FBI files, had been destroyed under a policy that is reducing more than half the bureau's files to ashes.

The bureau says it has to destroy the files because it is running out of room to store them. But many veteran agents say that the records are being destroyed because of the federal Freedom of Information and Privacy acts, generally referred to together as FOIPA. The acts have produced a deluge of requests from the public to see the files.

"I think we've all assumed a cause-and-effect relationship" between the acts and the destruction of the files, one agent says. "I don't think they (FBI officials) ever said that, but anybody who knows anything about the act (FOIPA) has got to come to that conclusion."

Jogging Memories

Whatever the motives, many agents say the file burning could impede law enforcement. "We were looking for a guy here in the northern Virginia area," one veteran agent says. "You say, well, look for old what's-his-name who was running with him. But nobody remembers old what's-his-name's name, and the file's gone."

Destruction of records is only one of several blows that law-enforcement officials complain of in connection with FOIPA. What distinguishes records destruction is that it has been hushed up. On other fronts, the FBI has openly complained that scores of agents (mostly law-school graduates) and hundreds of support employees are being tied up dealing with requests for information when they are badly needed in the field to fight crime. The FBI says it spends \$2 million a year—money that also is badly needed elsewhere.

Moreover, the FBI says, confidential informants have been clamping up because of fear that their identities will be revealed by the disclosures. Since wiretapping and bugging were greatly restricted by a 1968 law, such informants have become the FBI's sole effective weapon in many organized-crime cases.

Congress in the Act

Congress may have to deal with these issues this fall because of growing pressure from various law-enforcement agencies for some sort of revision of the two acts. Both acts were passed over President Ford's veto in the post-Watergate concern about the secret political misuse of law enforcement. Many FBI agents and other critics of the two laws say they agree with the general intent of Congress, but they also say that the sweeping language of the laws has invited widespread abuse.

The Freedom of Information Act—originally passed in 1966 but drastically changed in 1975—was designed to open all government documents for public inspection unless there was a good reason to keep them secret. The Privacy Act was designed to allow individuals to see any files the government kept on them, supposedly so they could challenge inaccuracies and eliminate material of a purely personal nature.

Officially, the FBI hasn't taken a stand on what it wants Congress to do about the two acts. But the bureau has been cooperating with the General Accounting Office on a study clearly designed to show that the acts interfere with law enforcement. "My personal feeling is that there has been (such interference)," says John Ols, assistant director of the GAO, "but our finding is that it has been very difficult to document. And that is what we set out to do." The GAO is to report its findings to the Senate Judiciary Committee early next month.

"Good Business Management"

The report won't cover problems created by records destruction, however, because the FBI's official position is that the destruction has nothing to do with FOIPA. "It's just good business management principles," says James Awe, section chief of the bureau's records management division in Washington.

The destruction policy started in April 1976, when the bureau told its field offices to eliminate records of cases that had been closed more than 10 years. In October 1977, the period was reduced to five years. And that represented just a small part of the destruction; it applied only to files in the so-called office of origin, the main FBI field office involved in each case.

Files in so-called auxiliary offices often contain as much information as the files in the office of origin, and these auxiliary files are being burned after only six months. The auxiliary files exist because, as a rule, agents don't travel on their cases; if questioning or other work needs to be done in other cities, as frequently happens, the field offices in the other cities do the work and forward copies of their reports to the office of origin. Under the new rules, the auxiliary offices don't even keep an index card referring to the work they have done. In the

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case of the Detroit extortionist, an agent happened to remember which office of origin had the file, and eventually retrieved it; in two more years, however, even this file would have been destroyed.)

The file-destruction policy exempts files of particular historical interest, files involved in litigation or an unresolved FOIPA request, and files where there is particular reason to believe the case will become active again. For example, the bureau says, nobody is burning any files in the Jimmy Hoffa case.

Agents concede that the bureau has files it doesn't need, such as cases started on tips that turned out to be baseless. But they contend that hundreds of thousands of files with solid information are being destroyed under the new policy.

One agent, a specialist in Mafia prosecutions, notes that Anthony Provenzano, the Mafioso Teamster official, only this summer was convicted of a murder committed 17 years ago. The conviction came about when new evidence surfaced during the FBI's investigation of the Hoffa case and was pieced together with other crucial items from the moldering file on the unsolved murder. "The Provenzano case absolutely couldn't have been prosecuted if the files had been destroyed, because of the value of the evidence developed in the 1960s," the agent says. "Often you find the information you need

where it's least suspected and where it's been for quite a time."

Mr. Awe, the bureau's official spokesman, says that summaries of all significant information in FBI files are preserved in a central file at bureau headquarters in Washington. Agents, however, say that only a small part of the information in a field-office file winds up in the central file. Moreover, the FBI has asked the archivist of the U.S., James B. Rhoades, for permission to destroy even the central files in criminal cases after they are 10 years old. Mr. Rhoades approved the destruction of the field-office files because, he says, agencies usually know best about their own files; but now he is withholding approval of the request to destroy central-office files and is seeking advice from Congress.

Avoiding Embarrassment?

Mr. Awe says the destruction of aging records was experimented with in some offices late in 1974 and so couldn't have been linked to FOIPA. But many agents disagree. "I don't give a damn what the bureau says," asserts one agent who reluctantly helped in the destruction. "Those files were destroyed for one specific reason: They had to cough them up. It had been thoroughly embarrassing to that point and promised to get even more embarrassing." As an example, he cites a disclosure under FOIPA of material about an alleged and previously unpublicized romance between Eleanor Roosevelt and a military officer.

"The really hypocritical thing about the whole situation is that although we had this stuff in our files, we weren't releasing it to anybody—and I have seen some really scurrilous stuff come out of these investigations," the agent says.

A colleague of his adds, "On balance, I would rather see a little bit of embarrassment for the administrators than handicap the whole investigative effort. This destroying of records after six months is a terrible mistake." He says that the records of a criminal whose name has frequently been in the news are being destroyed under the new policy before the criminal has finished serving his current jail term.

Beyond the controversy over whether files are being destroyed to avoid embarrassment, everyone involved agrees that the burden of looking through files whenever someone sends a request is enormous. Mr. Awe and other FBI spokesmen note that prior to release, every file has to be examined page by page by senior clerical employees under the supervision of FBI agents with law degrees. Many kinds of information are supposed to be deleted from the documents before disclosure, including material that might identify confidential informants, violate the privacy of third parties or disclose law-enforcement techniques.

Deadline for Replies

The law says that information requests must be answered within 10 days. But about 19,000 requests a year have been pouring in. The FBI's original FOIPA staff of 140 persons fell 12 or 13 months behind in its processing by 1976, and Congress demanded faster action.

That demand resulted in the FBI's "Project Onslaught," in which 300 field agents from around the country were brought to Washington for several months to attack the backlog. With some 650 persons working full time, the bureau whittled down the backlog to 30 days by the end of last year.

Then a judge ordered the release of the Julius and Ethel Rosenberg file—400,000 pages. A special team has been assigned to clear 40,000 of these pages a month. Meanwhile, the FBI says, the rest of the backlog has lengthened to between 90 and 120 days.

The FBI says that no more than 1% or 2% of the requests for information are from journalists or historians, who were expected to be the chief beneficiaries of the Freedom of Information Act. About 40% of the requests come from citizens who want to know if the FBI has a file on them but on whom no FBI file exists. Many thousands of other requests come from prison inmates purportedly looking for grounds for appeal. Skeptical agents, however, suspect the prisoners often are trying either to find out who informed on them or to kill time by harassing the FBI.

Requests From Mafia?

The bureau also says it has reliable evidence that the Mafia in at least one major city has instructed all its members to write requesting their files. "The sole purpose of this process is to attempt to identify informants," an FBI spokesman says. He adds that if a crook can glean even a hint that he is under investigation at a particular time, he can become much more circumspect until the heat's off.

Another problem is that plaintiff lawyers often want to use the FBI as a cheap investigative service. Agents tell of a recent homicide case on the high seas. Shipping executives told the FBI that they had previously been aware that the suspect was mentally unstable. Learning this under FOIPA, a lawyer for the victim's heirs has greatly enhanced his damage suit against the shipping company. Agents fear such episodes will imperil future investigations. One agent says witnesses now "are thinking not in terms of telling simply what happened, they are thinking of, God, if I say the wrong thing, the company's negligent."

Many agents say that because of FOIPA, they can't any longer in good faith guarantee anonymity to a source. "I can say that we'll do whatever we can, and that's usually pretty substantial, but I can't guarantee it," says an agent who has handled some of the bureau's most publicized cases. He adds, "You're assuming a lack of intelligence on the part of the applicant who gets the records that he won't be able to piece together who the source is. You're relying on the people who review the records (in Washington), and you just don't know how careful that guy is going to be."

"Often the people doing the processing aren't even aware that it's informant information," says another agent. One field official confides that he disobeys instructions from headquarters in some instances to keep information from being destroyed or disclosed. Agents in another office say they keep what they call "hip-pocket sources," whose identities are never recorded, against bureau regulations.

The FBI has compiled a list of examples of past informants who won't talk now because of the danger of disclosure under FOIPA. A spokesman says that more than

20 local or state police agencies have written "indicating that their intelligence units are fearful that furnishing information to us may jeopardize their own sources." He cites Los Angeles, Milwaukee and Phoenix police. Earlier this year, the bureau says, a federal judge declined to provide information about a candidate for another federal judgeship because he said he feared his derogatory remarks would come back to him through FOIPA.

Even civil-liberties lawyers who support FOIPA tend to oppose the file destruction, arguing that citizens whose rights have been violated may need the files to press suit against the government. Lawyers for the American Civil Liberties Union say they favor sealing old records so that only a judge can unseal them after a court hearing.

Whatever the solution, confusion and controversy have surrounded the bureau's destruction policy. An agent in the Northeast notes recent bureau instructions to make more use of the Racketeering in Interstate Commerce, or RICO, law. RICO, designed to combat Mafia-type crime, provides heavier penalties for violators who have established a pattern of racketeering activity. To invoke the law, the FBI must offer proof of prior acts consistent with the specific criminal act being charged. "The RICO statute says go back 10 years, and the files are destroyed after five years," the agent complains. "You figure it out."